

**General Docket
United States Court of Appeals for the Ninth Circuit**

Court of Appeals Docket #: 18-55476

Docketed: 04/11/2018
Termed: 02/11/2019

Nature of Suit: 2895 Freedom of Information Act of 1974

Center for Biological Diversit, et al v. USDHS, et al

Appeal From: U.S. District Court for Southern California, San Diego

Fee Status: Paid

Case Type Information:

- 1) civil
- 2) united states
- 3) null

Originating Court Information:

District: 0974-3 : [3:17-cv-01215-GPC-WVG](#)

Trial Judge: Gonzalo P. Curiel, District Judge

Date Filed: 06/15/2017

Date Order/Judgment:	Date Order/Judgment EOD:	Date NOA Filed:	Date Rec'd COA:
03/26/2018	03/26/2018	04/09/2018	04/09/2018

District: 0974-3 : [3:17-cv-01873-GPC-WVG](#)

Date Filed: 09/14/2017

Date Order/Judgment:	Date Order/Judgment EOD:	Date NOA Filed:	Date Rec'd COA:
03/26/2018	03/26/2018	04/09/2018	04/09/2018

District: 0974-3 : [3:17-cv-01911-GPC-WVG](#)

Date Filed: 09/20/2017

Date Order/Judgment:	Date Order/Judgment EOD:	Date NOA Filed:	Date Rec'd COA:
03/26/2018	03/26/2018	04/09/2018	04/09/2018

Prior Cases:

None

Current Cases:

Lead	Member	Start	End
Consolidated			
18-55474	18-55475	04/19/2018	
18-55474	18-55476	04/19/2018	

In re: BORDER INFRASTRUCTURE ENVIRONMENTAL
LITIGATION

CENTER FOR BIOLOGICAL DIVERSITY
Plaintiff,

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DEFENDERS OF WILDLIFE, a nonprofit conservation
organization
Plaintiff,

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SIERRA CLUB, a nonprofit public benefit corporation
Plaintiff,

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ANIMAL LEGAL DEFENSE FUND
Plaintiff,

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PEOPLE OF THE STATE OF CALIFORNIA, by and
through Xavier Becerra, Attorney General
Plaintiff - Appellant,

Michael P. Cayaban, Esquire, Attorney
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CALIFORNIA COASTAL COMMISSION
Plaintiff - Appellant,

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Edward Henry Ochoa, Esquire, Attorney
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(see above)

v.

U.S. DEPARTMENT OF HOMELAND SECURITY
Defendant - Appellee,

Katherine L. Parker, Assistant U.S. Attorney
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U.S. CUSTOMS AND BORDER PROTECTIONS
Defendant - Appellee,

Katherine L. Parker, Assistant U.S. Attorney
[COR LD NTC Assist US Attorney]
(see above)

H. Thomas Byron, III, Attorney
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(see above)

KIRSTJEN NIELSEN, Secretary, in her official capacity
Defendant - Appellee,

Katherine L. Parker, Assistant U.S. Attorney
[COR LD NTC Assist US Attorney]
(see above)

H. Thomas Byron, III, Attorney
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KEVIN K. MCALEENAN, Commissioner, in his official capacity
Defendant - Appellee,

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In re: BORDER INFRASTRUCTURE ENVIRONMENTAL LITIGATION,

CENTER FOR BIOLOGICAL DIVERSITY; DEFENDERS OF WILDLIFE, a nonprofit conservation organization; SIERRA CLUB, a nonprofit public benefit corporation; ANIMAL LEGAL DEFENSE FUND,

Plaintiffs,

and

PEOPLE OF THE STATE OF CALIFORNIA, by and through Xavier Becerra, Attorney General; CALIFORNIA COASTAL COMMISSION,

Plaintiffs - Appellants,

v.

U.S. DEPARTMENT OF HOMELAND SECURITY; U.S. CUSTOMS AND BORDER PROTECTIONS; KIRSTJEN NIELSEN, Secretary, in her official capacity; KEVIN K. McALEENAN, Commissioner, in his official capacity,

Defendants - Appellees.

- 04/11/2018 [1](#) 18 pg, 1.3 MB DOCKETED CAUSE AND ENTERED APPEARANCES OF COUNSEL. SEND MQ: Yes. The schedule is set as follows: Mediation Questionnaire due on 04/18/2018. Transcript ordered by 05/09/2018. Transcript due 06/08/2018. Appellants California Coastal Commission and People of the State of California opening brief due 07/18/2018. Appellees Kevin K. McAleenan, Kirstjen Nielsen, U.S. Customs and Border Protections and U.S. Department of Homeland Security answering brief due 08/20/2018. Appellant's optional reply brief is due 21 days after service of the answering brief. [10833188] (RT) [Entered: 04/11/2018 03:06 PM]
- 04/12/2018 [2](#) 2 pg, 109.97 KB Filed (ECF) notice of appearance of Benjamin M. Shultz for Appellees Kevin K. McAleenan, Kirstjen Nielsen, U.S. Customs and Border Protections and USDHS. Date of service: 04/12/2018. [10833756] [18-55476] (Shultz, Benjamin) [Entered: 04/12/2018 08:58 AM]
- 04/12/2018 [3](#) Added attorney Benjamin M. Shultz for USDHS Kevin K. McAleenan U.S. Customs and Border Protections Kirstjen Nielsen, in case 18-55476. [10833921] (NAC) [Entered: 04/12/2018 09:56 AM]
- 04/13/2018 [4](#) 2 pg, 158.42 KB Filed (ECF) notice of appearance of Noah Golden-Krasner for Appellant People of the State of California. Date of service: 04/13/2018. [10836595] [18-55476] (Golden-Krasner, Noah) [Entered: 04/13/2018 02:38 PM]
- 04/13/2018 [5](#) Added attorney Noah Golden-Krasner for People of the State of California CCC. [10836613] (RL) [Entered: 04/13/2018 02:42 PM]
- 04/16/2018 [6](#) 2 pg, 2.69 MB Filed (ECF) notice of appearance of Janelle Muriel Smith for Appellant People of the State of California. Date of service: 04/16/2018. [10838440] [18-55476] (Smith, Janelle) [Entered: 04/16/2018 02:57 PM]
- 04/16/2018 [7](#) Added attorney Janelle Smith for People of the State of California, in case 18-55476. [10838466] (NAC) [Entered: 04/16/2018 03:08 PM]
- 04/17/2018 [8](#) 155 pg, 43.66 MB Filed (ECF) Appellant People of the State of California Motion to expedite case. Date of service: 04/17/2018. [10840631] [18-55476] (Smith, Janelle) [Entered: 04/17/2018 05:22 PM]
- 04/18/2018 [9](#) 2 pg, 109.48 KB Filed (ECF) notice of appearance of Courtney Lynn Dixon for Appellees USDHS, U.S. Customs and Border Protections, Kevin K. McAleenan and Kirstjen Nielsen. Date of service: 04/18/2018. [10841497] [18-55476] (Dixon, Courtney) [Entered: 04/18/2018 12:23 PM]
- 04/18/2018 [10](#) Added attorney Courtney Dixon for USDHS Kevin K. McAleenan U.S. Customs and Border Protections Kirstjen Nielsen. [10841670] (RL) [Entered: 04/18/2018 01:30 PM]
- 04/18/2018 [11](#) 6 pg, 1.35 MB Filed (ECF) Appellant People of the State of California Mediation Questionnaire. Date of service: 04/18/2018. [10841916] [18-55476] (Smith, Janelle) [Entered: 04/18/2018 03:00 PM]
- 04/19/2018 [12](#) 3 pg, 202.46 KB Filed clerk order (Deputy Clerk: FG): The court sua sponte consolidates appeal Nos. 18-55474, 18-55475, and 18-55476. The court is in receipt of the motion to expedite filed by appellants in appeal No. 18-55476 (Docket Entry No. [\[8\]](#) in appeal No. 18-55476). Appellants indicate that appellees do not oppose the motion. Appellants in appeal Nos. 18-55474 and 18-55475 shall file a response or notice of non-opposition to the motion to expedite by Tuesday, April 24, 2018. Briefing is stayed pending further order. [10843758] [18-55474, 18-55475, 18-55476] (JMR) [Entered: 04/19/2018 04:29 PM]
- 04/20/2018 [13](#) Filed (ECF) Appellant Center for Biological Diversity in 18-55474 response joining motion ([\[8\]](#) Motion (ECF Filing), [\[8\]](#) Motion (ECF Filing) motion to expedite case). Date of service:

018	8 pg, 108.62 KB	04/20/2018. [10844361] [18-55474, 18-55476, 18-55475] (Segee, Brian) [Entered: 04/20/2018 10:36 AM]
04/23/2018	14 3 pg, 208.17 KB	MEDIATION ORDER FILED: These cases are NOT SELECTED for inclusion in the Mediation Program. Counsel may contact circuit mediator to discuss services available through the court's mediation program, to request a settlement assessment conf, or to request a stay of the appeal for settlement purposes. Also, upon agreement of the parties, the brfing sch can be modified or vacated to facilitate settlement discussions. Csl are requested to send copies of this order to their clients. Info regarding the mediation program may be found at www.ca9.uscourts.gov/mediation . [10845974] [18-55474, 18-55475, 18-55476] (VS) [Entered: 04/23/2018 08:45 AM]
04/26/2018	15 3 pg, 263.97 KB	Filed order (RICHARD C. TALLMAN and MARY H. MURGUIA) The unopposed motion to expedite these consolidated appeals is granted (Docket Entry No. [8] in appeal No. 18-55476). The consolidated opening brief and excerpts of record are due May 14, 2018; the consolidated answering brief is due June 25, 2018; and the consolidated, optional reply brief is due within 21 days after service of the answering brief. All parties on a side are ordered to file a single, joint brief. The length of the joint, consolidated opening brief may not exceed 17,000 words. The length of the joint, consolidated answering brief may not exceed 17,000 words. The length of the optional, joint, consolidated reply brief may not exceed 8,500 words. No requests to exceed the page or type volume limits, pursuant to Ninth Circuit Rule 32-2 or otherwise, will be entertained. No streamlined extensions will be approved under Ninth Circuit Rule 31-2.2(a). No written motions for extensions of time under Ninth Circuit Rule 31-2.2(b) will be granted absent extraordinary and compelling circumstances. The Clerk shall calendar these cases before a panel of all Ninth Circuit Judges in August 2018. See 9th Cir. Gen. Ord. 3.3(h). [10851722] [18-55474, 18-55475, 18-55476] (JMR) [Entered: 04/26/2018 10:02 AM]
04/26/2018	16	<p>This case is being considered for an upcoming oral argument calendar in Pasadena.</p> <p>Please review the Pasadena sitting dates for August 2018 at http://www.ca9.uscourts.gov/court_sessions. If you have an unavoidable conflict on any of the dates, please inform the court <i>immediately</i>, using CM/ECF (Type of Document: File Correspondence to Court; Subject: regarding availability for oral argument).</p> <p>When setting your argument date, the court will try to work around unavoidable conflicts; the court is not able to accommodate mere scheduling preferences. You will receive notice that your case has been assigned to a calendar approximately 10 weeks before the scheduled oral argument date.</p> <p>If the parties wish to discuss settlement before an argument date is set, they should jointly request referral to the mediation unit by filing a letter <i>immediately</i>, using CM/ECF (Type of Document: File Correspondence to Court; Subject: request for mediation). [10851742] [18-55474, 18-55475, 18-55476] (AKM) [Entered: 04/26/2018 10:08 AM]</p>
05/14/2018	17 97 pg, 860.9 KB	Submitted (ECF) Opening Brief for review. Submitted by Appellant Center for Biological Diversity in 18-55474, Appellants ALDF, DOW and Sierra Club in 18-55475, Appellants CCC and People of the State of California in 18-55476. Date of service: 05/14/2018. [10872210] [18-55474, 18-55475, 18-55476]--[COURT UPDATE: Attached corrected PDF of brief. 05/15/2018 by RY] (Cayaban, Michael) [Entered: 05/14/2018 06:55 PM]
05/14/2018	18 568 pg, 34.7 MB	Submitted (ECF) excerpts of record. Submitted by Appellant Center for Biological Diversity in 18-55474, Appellants ALDF, DOW, Sierra Club in 18-55475, Appellants CCC, People of the State of California in 18-55476. Date of service: 05/14/2018. [10872213] [18-55474, 18-55475, 18-55476]--[COURT UPDATE: Edited docket text to reflect correct party filers. 05/15/2018 by RY] (Cayaban, Michael) [Entered: 05/14/2018 07:18 PM]
05/15/2018	19 2 pg, 190.11 KB	Filed clerk order: The joint opening brief [17] submitted by appellants is filed. Within 7 days of the filing of this order, filer is ordered to file 7 copies of the brief in paper format, accompanied by certification, attached to the end of each copy of the brief, that the brief is

identical to the version submitted electronically. Cover color: blue. The paper copies shall be printed from the PDF version of the brief created from the word processing application, not from PACER or Appellate CM/ECF. The Court has reviewed the joint excerpts of record [18] submitted by appellants. Within 7 days of this order, filer is ordered to file 4 copies of the excerpts in paper format, with a white cover. The paper copies must be in the format described in 9th Circuit Rule 30-1.6. [10873075] [18-55474, 18-55475, 18-55476] (KWG) [Entered: 05/15/2018 01:13 PM]

- 05/17/2018 20 Received 7 paper copies of the Joint Opening Brief [17] filed by Appellants. [10876172] [18-55474, 18-55475, 18-55476] (Sent to Panel) (RG) [Entered: 05/17/2018 11:44 AM]
- 05/17/2018 21 Filed 4 paper copies of joint excerpts of record [18] in 3 volume(s) filed by Appellants. (Sent to Panel) [10876321] [18-55474, 18-55475, 18-55476] (KWG) [Entered: 05/17/2018 12:53 PM]
- 05/18/2018 22 Filed (ECF) notice of appearance of Edward H. Ochoa for Appellant People of the State of California in 18-55476. Date of service: 05/18/2018. [10877304] [18-55474, 18-55475, 18-55476] (Ochoa, Edward) [Entered: 05/18/2018 09:14 AM]
- 05/18/2018 23 Added attorney Edward Henry Ochoa for People of the State of California CCC. [10877595] [18-55474, 18-55475, 18-55476] (RL) [Entered: 05/18/2018 10:47 AM]
- 05/30/2018 24 Notice of Oral Argument on Tuesday, August 7, 2018 - 09:00 A.M. - Courtroom 3 - Pasadena CA.
View the Oral Argument Calendar for your case [here](#).
Be sure to review the [GUIDELINES](#) for important information about your hearing, including when to arrive (30 minutes before the hearing time) and when and how to submit additional citations (filing electronically as far in advance of the hearing as possible).
When you have reviewed the calendar, download the [ACKNOWLEDGMENT OF HEARING NOTICE form](#), complete the form, and file it via Appellate ECF or return the completed form to: PASADENA Office.
[10889329] [18-55474, 18-55475, 18-55476] (DJW) [Entered: 05/30/2018 10:59 AM]
- 05/31/2018 25 Filed (ECF) Acknowledgment of hearing notice. Location: Pasadena. Filed by Attorney Mr. Noah Golden-Krasner for Appellants CCC and People of the State of California in 18-55476. [10892413] [18-55476, 18-55474, 18-55475] (Golden-Krasner, Noah) [Entered: 05/31/2018 04:26 PM]
- 06/08/2018 26 Filed (ECF) notice of appearance of H. Thomas Byron III for Appellees Kevin K. McAleenan, Kirstjen Nielsen, U.S. Customs and Border Protections and USDHS in 18-55474, 18-55475, 18-55476. Date of service: 06/08/2018. [10902297] [18-55474, 18-55475, 18-55476] (Byron, H. Thomas) [Entered: 06/08/2018 01:51 PM]
- 06/08/2018 27 Added attorney H. Thomas Byron III for USDHS Kevin K. McAleenan U.S. Customs and Border Protections Kirstjen Nielsen. [10902333] [18-55474, 18-55475, 18-55476] (JFF) [Entered: 06/08/2018 02:01 PM]
- 06/08/2018 28 Terminated Galen N. Thorp for Kevin K. McAleenan, USDHS, U.S. Customs and Border Protections and Kirstjen Nielsen in 18-55474, USDHS, U.S. Customs and Border Protections, Kirstjen Nielsen and Kevin K. McAleenan in 18-55475 and USDHS, U.S. Customs and Border Protections, Kirstjen Nielsen and Kevin K. McAleenan in 18-55476 (for failure to register for CM/ECF). [10902518] [18-55474, 18-55475, 18-55476] (RY) [Entered: 06/08/2018 02:50 PM]

- 06/12/2018 [29](#)
1 pg, 52.2 KB Filed (ECF) Acknowledgment of hearing notice. Location: Pasadena. Filed by Attorney Mr. H. Thomas Byron, III for Appellees Kevin K. McAleenan, Kirstjen Nielsen, U.S. Customs and Border Protections and USDHS in 18-55474, Attorney Mr. H. Thomas Byron, III for Appellees USDHS, U.S. Customs and Border Protections, Kirstjen Nielsen and Kevin K. McAleenan in 18-55475, 18-55476. [10906136] [18-55474, 18-55475, 18-55476] (Byron, H. Thomas) [Entered: 06/12/2018 03:26 PM]
- 06/25/2018 [30](#)
91 pg, 459.7 KB Submitted (ECF) Answering Brief for review. Submitted by Appellees Kevin K. McAleenan, Kirstjen Nielsen, U.S. Customs and Border Protections and USDHS in 18-55474, 18-55475, 18-55476. Date of service: 06/25/2018. [10921639] [18-55474, 18-55475, 18-55476] (Shultz, Benjamin) [Entered: 06/25/2018 05:09 PM]
- 06/25/2018 [31](#)
207 pg, 25.94 MB Submitted (ECF) supplemental excerpts of record. Submitted by Appellees Kevin K. McAleenan, Kirstjen Nielsen, U.S. Customs and Border Protections and USDHS in 18-55474, 18-55475, 18-55476. Date of service: 06/25/2018. [10921652] [18-55474, 18-55475, 18-55476] (Shultz, Benjamin) [Entered: 06/25/2018 05:18 PM]
- 06/26/2018 [32](#)
2 pg, 189.28 KB Filed clerk order: The answering brief [\[30\]](#) submitted by appellees is filed. Within 7 days of the filing of this order, filer is ordered to file 7 copies of the brief in paper format, accompanied by certification, attached to the end of each copy of the brief, that the brief is identical to the version submitted electronically. Cover color: red. The paper copies shall be printed from the PDF version of the brief created from the word processing application, not from PACER or Appellate CM/ECF. The Court has reviewed the supplemental excerpts of record [\[31\]](#) submitted by appellees. Within 7 days of this order, filer is ordered to file 4 copies of the excerpts in paper format, with a white cover. The paper copies must be in the format described in 9th Circuit Rule 30-1.6. [10921839] [18-55474, 18-55475, 18-55476] (KWG) [Entered: 06/26/2018 08:41 AM]
- 06/29/2018 [33](#)
Received 7 paper copies of Answering Brief [\[30\]](#) filed by Appellees in 18-55474, 18-55475, 18-55476. [10928453] [18-55474, 18-55475, 18-55476] (Sent to Panel) (RG) [Entered: 07/02/2018 09:37 AM]
- 06/29/2018 [34](#)
Filed 4 paper copies of supplemental excerpts of record [\[31\]](#) in 1 volume(s) filed by Appellees. (Sent to Panel) [10928494] [18-55474, 18-55475, 18-55476] (KWG) [Entered: 07/02/2018 09:52 AM]
- 07/16/2018 [35](#)
51 pg, 401.73 KB Submitted (ECF) Reply Brief for review. Submitted by Appellants People of the State of California and CCC in 18-55476, Appellant Center for Biological Diversity in 18-55474, Appellants DOW, Sierra Club and ALDF in 18-55475. Date of service: 07/16/2018. [10944445] [18-55476, 18-55474, 18-55475] (Smith, Janelle) [Entered: 07/16/2018 08:22 PM]
- 07/17/2018 [36](#)
2 pg, 189.93 KB Filed clerk order: The joint reply brief [\[35\]](#) submitted by appellants is filed. Within 7 days of the filing of this order, filer is ordered to file 7 copies of the brief in paper format, accompanied by certification, attached to the end of each copy of the brief, that the brief is identical to the version submitted electronically. Cover color: gray. The paper copies shall be printed from the PDF version of the brief created from the word processing application, not from PACER or Appellate CM/ECF. [10944600] [18-55476, 18-55474, 18-55475] (KWG) [Entered: 07/17/2018 08:47 AM]
- 07/20/2018 [37](#)
Received paper copies of the joint Reply Brief [\[35\]](#) filed by Appellants. [10950931] [18-55474, 18-55475, 18-55476] (Sent to Panel) (RG) [Entered: 07/23/2018 08:55 AM]
- 08/07/2018 [38](#)
ARGUED AND SUBMITTED TO M. MARGARET MCKEOWN, CONSUELO M. CALLAHAN and JACQUELINE H. NGUYEN. [10968854] [18-55474, 18-55475, 18-55476]--[Edited 08/08/2018 by DJW] (DJW) [Entered: 08/07/2018 12:35 PM]

08/08/2 39
018 1 pg, 10.77 MB

Filed Audio recording of oral argument.

Note: Video recordings of public argument calendars are available on the Court's website, at <http://www.ca9.uscourts.gov/media/>
[10970492] [18-55474, 18-55475, 18-55476] (DJW) [Entered: 08/08/2018 01:30 PM]

02/11/2 40
019 34 pg, 240.65 KB

FILED OPINION (M. MARGARET MCKEOWN, CONSUELO M. CALLAHAN and JACQUELINE H. NGUYEN) AFFIRMED. Judge: MMM Authoring, Judge: CMC Dissenting FILED AND ENTERED JUDGMENT. [11184856] [18-55474, 18-55475, 18-55476]--[Edited: Replaced PDF of Opinion (non-substantive edits made). 02/13/2019 by RY] (RMM) [Entered: 02/11/2019 07:46 AM]
